Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

74 NO. ____, ORIGINAL

STATE OF GEORGIA, *Plaintiff*,

v.

STATE OF SOUTH CAROLINA, *Defendant*.

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

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13 pp

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NO. _____, ORIGINAL

STATE OF GEORGIA, *Plaintiff*,

v.

STATE OF SOUTH CAROLINA, *Defendant*.

MOTION FOR LEAVE TO FILE COMPLAINT

Comes now the State of Georgia, by and through the Attorney General of Georgia, and respectfully asks leave of the Court to file its Complaint against the State of South Carolina, submitted herewith.

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OCTOBER TERM, 1977

NO. _____, ORIGINAL

STATE OF GEORGIA, *Plaintiff*,

v.

STATE OF SOUTH CAROLINA, *Defendant*.

COMPLAINT

Comes now the State of Georgia, by and through its Attorney General, and brings this suit against the Defendant, the State of South Carolina, and for its cause of action states:

1.

The jurisdiction of this Court is invoked pursuant to Art. III, Sec. 2, Clause 2 of the Constitution of the United States, and 28 U.S.C. § 1251(a)(1).

2.

On June 9, 1732, George II, King of Great Britain, France and Ireland, issued letters patent establishing the Colony of Georgia, and describing the boundary between the Colony of Georgia and the Colony of South Carolina as "the most northern Stream of a River there, commonly called the Savannah."

3.

On April 28, 1787, commissioners appointed by the two states executed a convention resolving a dispute between the two states as to their common boundary, which convention is hereafter referred to as the Treaty of Beaufort, which was properly ratified by the two states and by the Congress of the United States.

4.

The Treaty of Beaufort, which established the boundary between the State of Georgia and the State of South Carolina, provides in pertinent part as follows:

> "Article first, The most northern branch or steam of the River Savannah, from the Sea or mouth of such stream, to the fork or confluence of the Rivers now called Tugoloo and Keowee, and from thence the most northern branch or stream of the said River Tugoloo 'till it intersects the Northern boundary line of South Carolina, if the said branch or stream of Tugoloo extends so far North, reserving all the islands in the said Rivers Savannah and Tugoloo to Georgia; but if the head spring or source of any branch or stream of the said River Tugoloo does not extend to the north boundary line of South Carolina, then a west line to the Mississippi, to be drawn from the head spring or source of the said branch or stream of Tugoloo river, which extends to the highest northern latitude, Shall forever hereafter form the separation, limit, and boundary between the States of South Carolina and Georgia.
>
> "Article the second. The navigation of the River Savannah, at and from the bar, and mouth, along the Northeast side of Cockspur Island, and up the direct course of the main northern channel, along the northern side of Hutchinson's Island opposite the town of Savannah, to the upper end of the said Island, and from thence up the bed or principal stream of the said River to the confluence of the Rivers Tugoloo and Keowee and from

> the confluence up the Channel of the most northern stream of Tugoloo River to its source; And back again, by the same channel to the Atlantick Ocean, Is hereby declared to be henceforth equally free to the citizens of both States, and exempt from all duties, tolls, hindrance, interruption, or molestation whatsoever, attempted to be enforced by one State on the Citizens of the other; And all the rest of the river Savannah, to the southward of the foregoing description, is acknowledged to be the exclusive right of the State of Georgia."

5.

By the terms of the Treaty of Beaufort, all islands in the Savannah River are specifically reserved to Georgia. In addition, the Treaty of Beaufort, as construed by this Court in *Georgia v. South Carolina*, 257 U.S. 516 (1922), provides that the bed of the Savannah River, to the middle of the northernmost stream or branch thereof, is within the boundaries of the State of Georgia and subject to its jurisdiction.

6.

The State of South Carolina and the State of Georgia presently have a dispute concerning the location of the boundary between the two states in the lower reaches and mouth of the Savannah River, from approximately the City of Savannah, Georgia, downstream to the Atlantic Ocean. In addition, the parties are in dispute as to the location of the lateral seaward boundary between the two states.

7.

The boundary dispute between the State of Georgia and the State of South Carolina is illustrated generally by maps published by the United States Geological Survey, which are attached hereto as Exhibits A and B. Exhibit A

is a reduction of a composite of the United States Geological Survey quadrangle sheets for Savannah, Ga.-S.C.; Fort Pulaski, S.C.-Ga.; and Savannah Reach North, S.C.-Ga., which quadrangle sheets were published by the United States Geological Survey in 1955. Exhibit B is a reduction of a composite of the 1971 revisions of the same three quadrangle sheets. Exhibit A, published in 1955, shows the boundary line in the location argued for by the State of South Carolina. Exhibit B, published in 1971, correctly relocates the boundary in certain areas.

8.

The lower reaches and mouth of the Savannah River, from the City of Savannah to the Atlantic Ocean, have been extensively altered by the actions of the United States Army Corps of Engineers in improving the Savannah River for navigation. The topographical changes resulting from actions of the United States Army Corps of Engineers are avulsive changes in the river and do not change the location of the boundary line between Georgia and South Carolina.

9.

By operation of the Treaty of Beaufort, all islands and former islands in the Savannah River, such as Pennyworth Island, Barnwell Island(s), Jones Island, Oyster Bed Island, and several unnamed islands, are within the boundaries of the State of Georgia and are subject to the jurisdiction of the State of Georgia, even though these islands may now be affixed to the mainland of South Carolina as a result of artificial man-made changes. In addition, there are certain areas now located on the northern bank of the Savannah River which were originally located south of the middle of the northernmost stream or branch of the Savannah River; where the river has

changed course because of artificial man-made changes, such areas remain within the boundaries of the State of Georgia.

10.

The boundary between Georgia and South Carolina runs north of the peninsula of land generally referred to as Oyster Bed Island, as shown on Exhibit B, and continues in a northeasterly direction to a midpoint between Tybee Island, Georgia and Hilton Head Island, South Carolina, which is the middle of the mouth of the Savannah River.

11.

The lateral seaward boundary between Georgia and South Carolina runs from a midpoint between Tybee Island, Georgia and Hilton Head Island, South Carolina, which is the middle of the mouth of the Savannah River, easterly in a due east direction along a parallel of latitude to the three-mile limit.

12.

Since 1787 the State of Georgia has continuously claimed and asserted jurisdiction and sovereignty over all islands in the Savannah River, over the Savannah River and the bed thereof north to the middle of the northernmost stream or branch thereof, and over all waters and waterbottoms lying south of the middle of the mouth of the Savannah River.

13.

The State of South Carolina has acquiesced in the State of Georgia's exercise of jurisdiction and sovereignty over all islands in the Savannah River, over the Savannah River and the bed thereof north to the middle of the

northernmost stream or branch thereof, and over all waters and waterbottoms lying south of the middle of the mouth of the Savannah River.

14.

The 1977 Session of the General Assembly of South Carolina passed a concurrent resolution, stating in pertinent part as follows:

"WHEREAS, the boundary between South Carolina and our sister state Georgia has for many years been in question; and

"WHEREAS, the location of the boundary is of importance regarding the management of natural resources, the location of industry and many other items of interest to both States; and

"WHEREAS, there exists no document or other historical record which would support the placement of the boundary as presently delineated by the United States Geological Survey; and

"WHEREAS, the General Assembly finds the United States Geological Survey to be in error regarding the agency's delineation of the boundary on the Fort Pulaski and Savannah topographic maps as updated in 1971. . . ."

15.

The Boundary Commission of South Carolina, established by the South Carolina General Assembly, has stated in correspondence with the United States Geological Survey that the State of South Carolina contends that the boundary is as shown on Exhibit A, and that the location of the boundary is presently in dispute in the areas of Barnwell Island and Oyster Bed Island.

16.

In the 1977 Session of the General Assembly of Georgia,

the House of Representatives and the Georgia State Senate passed identical resolutions providing that the State of Georgia and the State of South Carolina presently are in dispute concerning the location of the boundary between the two states in the lower reaches and the mouth of the Savannah River and further stating in pertinent part as follows:

"1. That the Georgia House of Representatives [Senate] hereby expresses its desire that the boundary line between the State of Georgia and the State of South Carolina be precisely located in the lower reaches and in the mouth of the Savannah River;

"2. That such boundary line should be precisely located only as established by the Charter, the Convention of Beaufort and applicable principles of law;

"3. That the boundary line between the State of Georgia and the State of South Carolina in the lower reaches and in the mouth of the Savannah River is not the middle of the present navigational channel of the Savannah River, artificially created by the Corps of Engineers;

"4. That the peninsula of land known as 'Oyster Bed Island' lies within the boundaries of the State of Georgia; and

"5. That the Governor and the Attorney Genera are hereby requested and directed to take whatever measures are necessary, including negotiation, litigation, or both, to resolve the dispute concerning the boundary line between the State of Georgia and the State of South Carolina in the lower reaches and the mouth of the Savannah River."

17.

The boundary line dispute between Georgia and South Carolina involves over 10,000 acres of waters and water-

bottoms and more than three thousand acres of high ground and marshland.

18.

Representatives from the State of Georgia and the State of South Carolina have met on several occasions since 1968 in an effort to resolve the dispute concerning the boundary line in the lower reaches and the mouth of the Savannah River and concerning the lateral seaward boundary between the two states. Such efforts at negotiation have not been successful, and it appears highly unlikely that any agreement as to the boundary dispute can be reached.

19.

The existence of the dispute between Georgia and South Carolina as to the boundary line in the area of Barnwell Island and other tracts now on the north bank of the Savannah River has created serious problems for the State of Georgia. Barnwell Island and other tracts now on the north bank of the Savannah River are prime sites for port and industrial development, and the uncertainty as to the jurisdiction over and title to these areas prevents their development.

20.

The existence of the dispute between Georgia and South Carolina as to the location of the boundary line in the mouth of the Savannah River and out to the three-mile limit has created serious problems for both states and for the citizens of both states in regard to the enforcement of laws, particularly laws relating to commercial fishing. The State of Georgia has made diligent efforts to reach a temporary agreement concerning enforcement of these laws in the disputed area, but all such efforts at agreement have failed.

21.

On June 29, 1977, a resident of South Carolina licensed as a commercial shrimp fisherman under South Carolina law was apprehended by law enforcement officers of the Georgia Department of Natural Resources while engaged in illegal commercial fishing in Georgia waters. The South Carolina shrimp fisherman resisted arrest, assaulted the Georgia Conservation Rangers, and fled to South Carolina. On July 15, 1977, the Governor of Georgia requested the Governor of South Carolina to extradite the South Carolina fisherman to Georgia to stand trial on charges of obstruction of officers, simple battery, and illegal commercial fishing. On July 22, 1977, the Governor of South Carolina refused the request for extradition, basing his refusal on the existence of the boundary dispute.

22.

Continued existence of the boundary dispute has caused and will continue to cause serious problems and inconvenience to the State of Georgia, the State of South Carolina, and citizens of both states with regard to the enforcement of laws in the disputed area and the determination of property rights as to land and waterbottoms within the disputed area.

23.

The original jurisdiction of this Court is invoked because there is a pressing need for prompt and final settlement of the controversy, and because the question in issue, the location of the boundary between the State of Georgia and the State of South Carolina, can be resolved by this Court alone.

WHEREFORE, the State of Georgia prays:

(1) That process be issued against the State of South

Carolina and that the State of South Carolina be required to answer this Complaint;

(2) That a decree be entered declaring the true and correct boundary line between the State of Georgia and the State of South Carolina in the lower reaches and the mouth of the Savannah River and in the territorial sea to the three-mile limit;

(3) That the boundary be declared to be the middle of the northernmost stream or branch of the Savannah River, as such river existed in 1787, as changed by natural accretion and erosion but not as altered by avulsions, reserving all islands, including Barnwell Island, Jones Island, and Oyster Bed Island, to Georgia, thence running to a point midway between Tybee Island, Georgia and Hilton Head Island, South Carolina, and thence due east to the three-mile limit;

(4) That the Court issue a preliminary injunction prohibiting the State of South Carolina from enforcing its laws or asserting jurisdiction within the area in dispute; and

(5) For such other and further relief as this Court may deem to be proper.

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AUGUST, 1977

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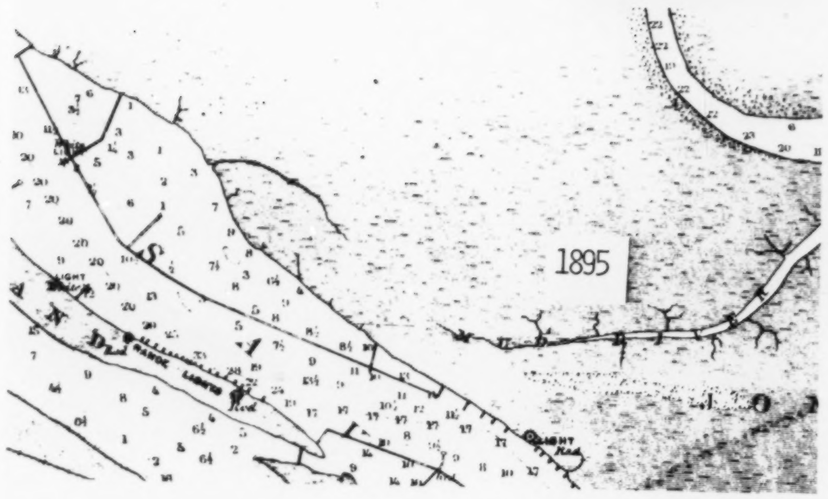
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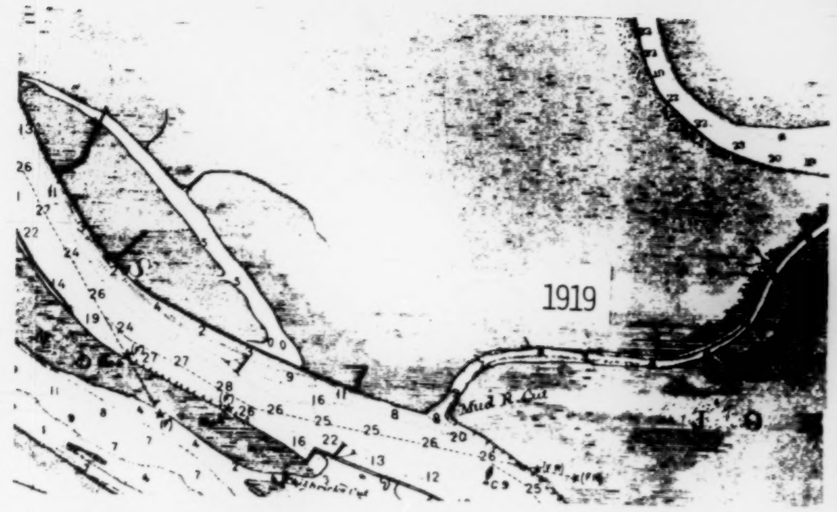
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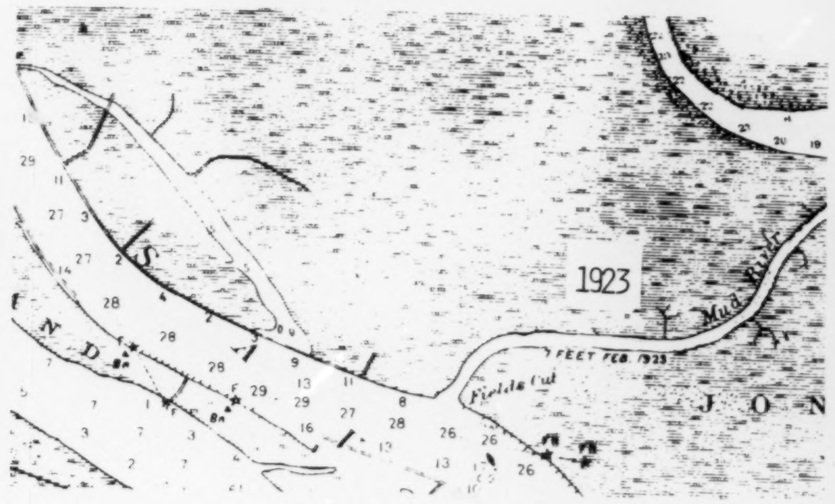
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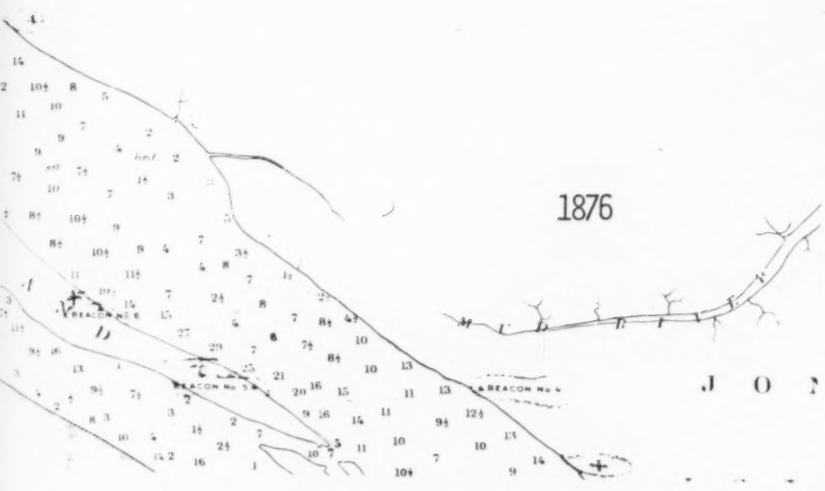
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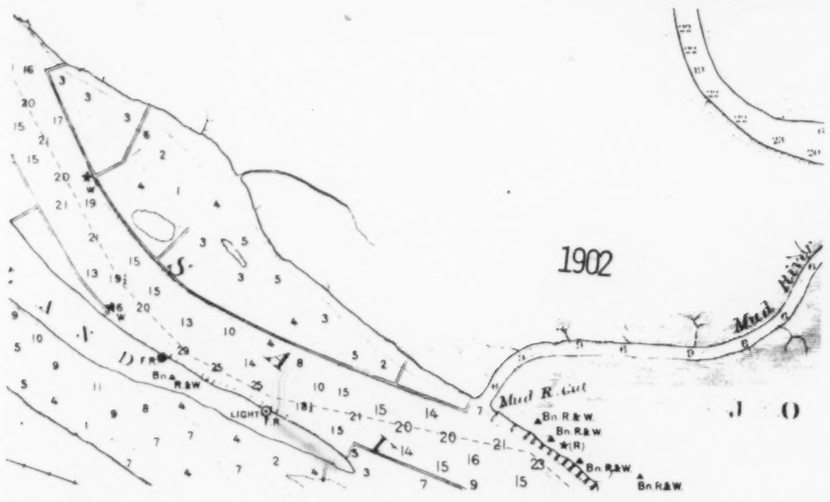


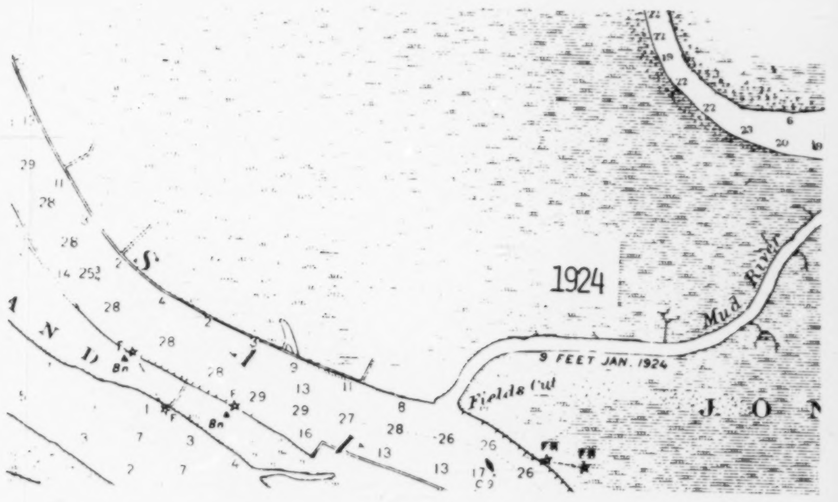




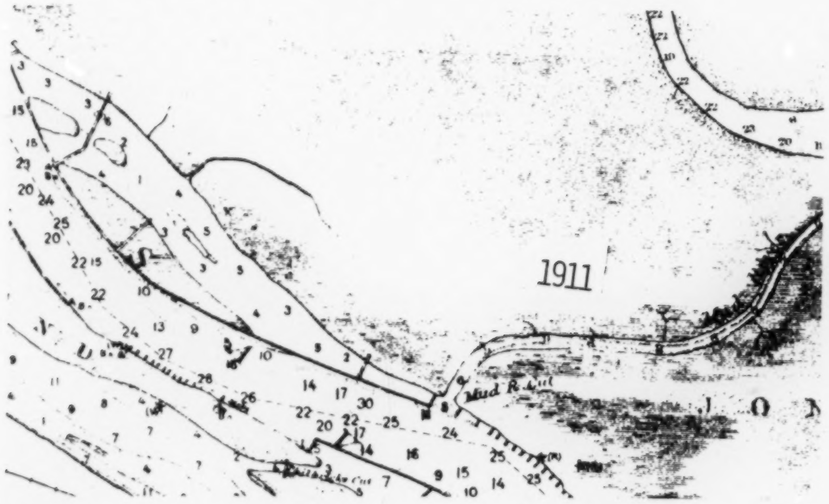


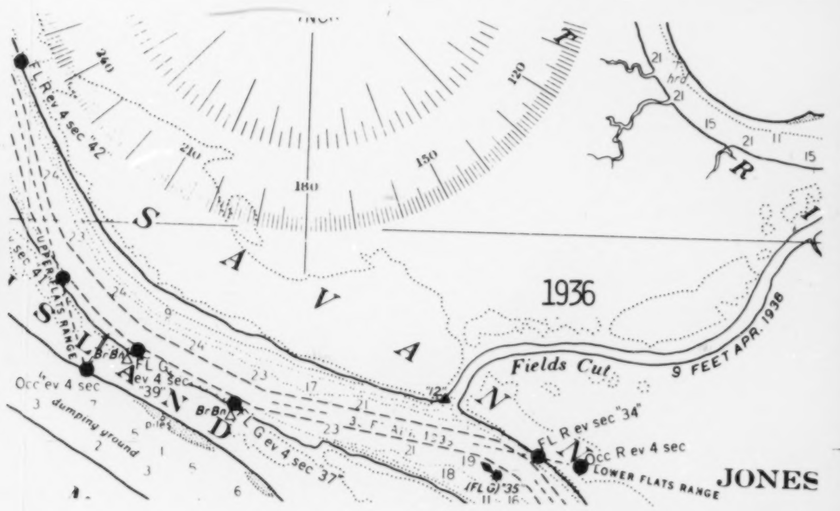


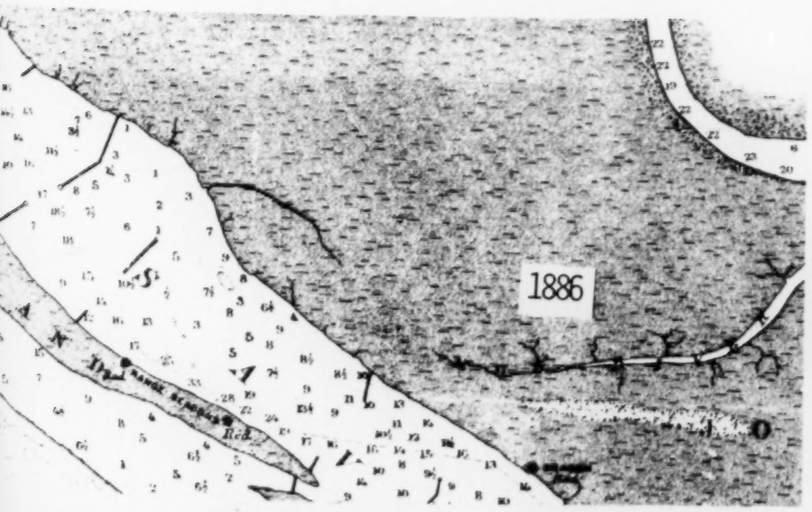


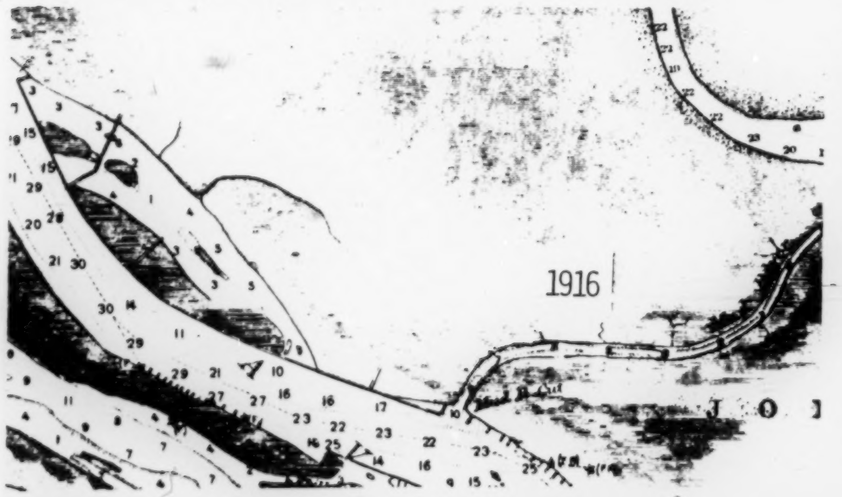


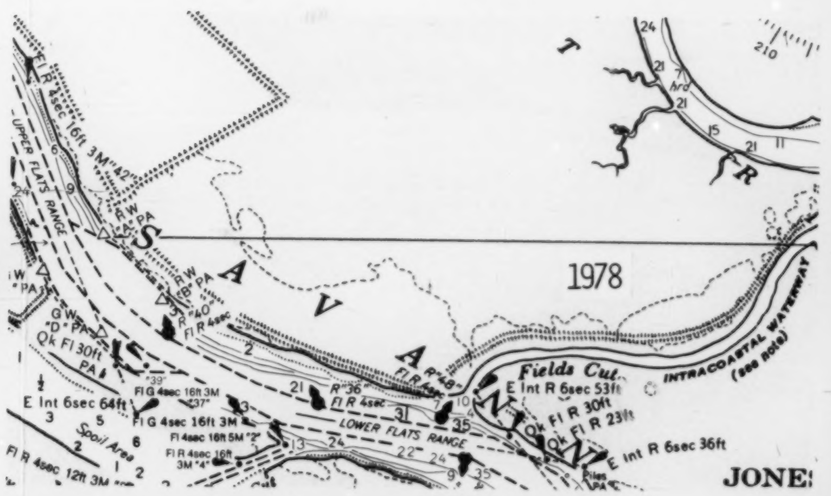






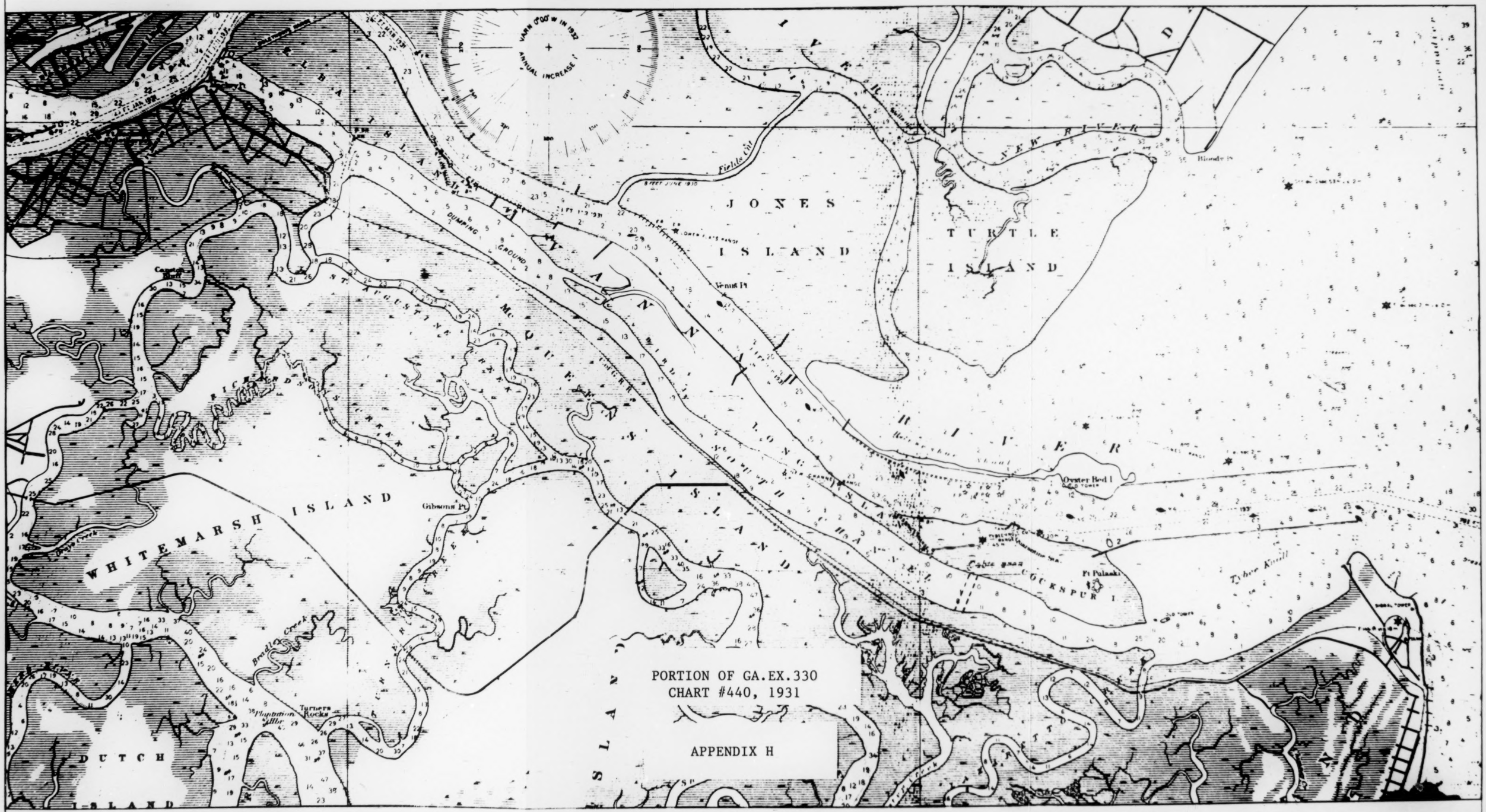






OVERSIZE FOLDOUT(S) FOUND HERE IN THE PRINTED EDITION OF THIS VOLUME ARE FOUND FOLLOWING THE LAST PAGE OF TEXT IN THIS MICROFICHE EDITION.

SEE FOLDOUT NO 1


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ISLAND
TURTLE
ISLAND
WHITEMARSH ISLAND
DUTCH
ISLAND
Fields Cut
NEW RIVER
Oyster Bed
Ft Pulaski
CUCKSPUR I
Gibsons Pt
Turners Rocks
Bradley Creek
DUMPING GROUND
VARN (1932) W IN 1932
ANNUAL INCREASE 1'
PORTION OF GA.EX.330
CHART #440, 1931
APPENDIX H

MOTION

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BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

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OCTOBER TERM, 1977

NO. _____, ORIGINAL

STATE OF GEORGIA, *Plaintiff*,

v.

STATE OF SOUTH CAROLINA, *Defendant*.

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE COMPLAINT

JURISDICTION

The State of Georgia moves for leave to file this original action against the State of South Carolina pursuant to Art. III, Sec. 2, Clause 2 of the Constitution of the United States, and 28 U.S.C. § 1251(a)(1).

This action seeks to establish and determine the location of the boundary line between the State of Georgia and the State of South Carolina in the lower reaches and mouth of the Savannah River and out to the three-mile limit. The original jurisdiction of this Court is invoked because negotiations between the two states have proved fruitless, and because this Court has exclusive jurisdiction of suits between two states. The proposed Complaint asserts Georgia's claim to jurisdiction over certain lands, waters and waterbottoms in the lower reaches and mouth of the Savannah River and extending out to the three-mile limit. The State of Georgia has suffered and continues to

suffer injury and uncertainty as a result of the State of South Carolina's adverse claim to territory which is within the boundaries of the State of Georgia.

STATEMENT

On June 9, 1732, George II, King of Great Britain, France and Ireland, issued letters patent constituting the Charter of the Colony of Georgia. The Charter describes the boundary between the Colony of Georgia and the Colony of South Carolina as the most northern stream of the Savannah River and includes all islands within twenty leagues of the coast.[1] The boundary line between Georgia and South Carolina proved to be a matter of dispute between the two colonies and between the two states after the formation of the United States. In 1787, commissioners appointed by the two states met at Beaufort, South Carolina and entered into a convention concerning their common boundary.[2] The treaty of Beaufort, properly ratified by the states and the United States Congress pursuant to the Articles of Confederation, provides that the boundary between the two states is "The most northern branch or stream of the River Savannah, from the Sea or mouth of such stream, to the fork or confluence of the Rivers now called Tugoloo and Keowee, . . . reserving all the islands in the said Rivers Savannah and Tugoloo to Georgia. . . ."[3] The Treaty of Beaufort also provides that the navigation of the Savannah River, from the bar and mouth, up the main northern channel of the river, shall be equally free to the citizens of both states.[4]

[1] Franklin K. Van Zandt, *Boundaries of the United States and the Several States* (Geological Survey Professional Paper 909, 1976), at 100.

[2] *Id.* at 99; *Georgia v. South Carolina*, 257 U.S. 516, at 518 (1922).

[3] *Georgia v. South Carolina*, *supra*, at 519.

[4] *Id.* at 519.

Even subsequent to the Treaty of Beaufort, disputes continued to arise concerning the location of the boundary in the Savannah River. In 1917 the State of Georgia brought an original action in the Supreme Court concerning this boundary. The Court's decision held as follows:

> "(1) Where there are no islands in the boundary rivers the location of the line between the two states is on the water midway between the main banks of the river when the water is at ordinary stage; (2) Where there are islands the line is midway between the island bank and the South Carolina shore when the water is at ordinary stage; and (3) That islands in the Chattooga river are reserved to Georgia as completely as are those in the Savannah or Tugaloo rivers."[5]

The current dispute and uncertainty concerning the Georgia-South Carolina boundary deals with the segment of the Savannah River from the City of Savannah, Georgia, southeastwardly downstream to the Atlantic Ocean and then to the three-mile limit.[6] Because of the importance of the City of Savannah as a harbor, the United States Army Corps of Engineers has engaged in significant works to improve the navigability of the Savannah River. The navigational improvements by the United States Army Corps of Engineers commenced in the late 19th Century and continue to this date. These construction activities have resulted in substantial avulsive changes in the topography and configuration of the river, islands in the river, and the adjacent banks. While the states agree that the boundary was established by the Treaty of Beaufort, the construction and application of the treaty is in question due in large part to the significant changes which have occurred in this segment of the river since 1787.

[5] *Id.* at 523.

[6] Exhibits A and B to Complaint.

The present uncertainty as to the location of the boundary is graphically illustrated by maps published by the United States Geological Survey and attached as Exhibit A and Exhibit B to the proposed Complaint. South Carolina contends that Exhibit A, published in 1955, shows the correct location of the boundary. Exhibit B, published in 1971, correctly relocates the boundary in certain areas and in such areas describes the Georgia-South Carolina boundary as an "Indefinite Boundary".

One example of the areas affected by the artificial changes in the river and as a result currently in dispute is Barnwell Island, which was once an island in the Savannah River but which became affixed to the South Carolina bank as a result of construction works of the United States Army Corps of Engineers.[7] Barnwell Island was the subject of a condemnation petition filed in 1952 by the United States in the United States District Court for the Southern District of Georgia. Both the State of Georgia and the State of South Carolina were named as defendants in that action, along with certain individuals, but the State of South Carolina never appeared in the litigation. The appropriateness of the jurisdiction in the United States District Court for the Southern District of Georgia was challenged by a private claimant to the property, and the case was dismissed by the District Court. The United States Court of Appeals for the Fifth Circuit reversed, holding, "There is, there can be, no doubt that the land here involved is in the State of Georgia."[8] While a petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit was pending in the United States Supreme Court, the State of South Carolina sought to bring an original action, asserting a claim to jurisdiction over Barnwell Island. The Motion for Leave to File Complaint, alleging that Barnwell Island was in South Carolina, was denied.[9] A subsequent request by South Carolina to bring an original action dealing with the boundary in the area of Barnwell Island was likewise refused.[10]

[7] Exhibits A and B to Complaint.

[8] *United States v. 450 Acres of Land*, 220 F.2d 353 at 356 (5th Cir.), *cert. denied*, 350 U.S. 826 (1955).

ARGUMENT

There exists a substantial controversy between the two states and it appears that litigation is the only means available to resolve the dispute.

Despite the prior litigation concerning Barnwell Island, the State of South Carolina has once again resurrected a claim to jurisdiction over Barnwell Island. South Carolina has demanded that revised maps of this area soon to be published by the United States Geological Survey be altered so as to omit any delineation of a Georgia-South Carolina boundary line in the areas of Barnwell Island and Oyster Bed Island. Barnwell Island, like other areas claimed by both Georgia and South Carolina, is valuable property for development of port and industrial facilities associated with the Savannah harbor. South Carolina's claim to Barnwell Island, while spurious, has the effect of creating a cloud on Georgia's title to and jurisdiction over Barnwell Island.

The current uncertainty concerning the location of the Georgia-South Carolina boundary line in the mouth of the Savannah River has created serious problems with regard to enforcement of the laws relating to commercial fishing. As set forth in the proposed Complaint, Georgia's efforts

[9] *South Carolina v. Georgia*, 350 U.S. 812 (1955).

[10] *South Carolina v. Georgia*, 352 U.S. 1030 (1957).

to arrive at a working agreement for enforcement of such laws pending resolution of the boundary dispute have failed. An example of the immediate and significant problems arising from the continued dispute is an incident which occurred on June 29, 1977, when a commercial shrimp fisherman licensed by South Carolina was arrested for engaging in illegal fishing in Georgia waters which were then closed to commercial fishing. The South Carolina fisherman resisted arrest, assaulted the Georgia law enforcement officers, and fled to South Carolina. On July 15, 1977, the Governor of Georgia requested the Governor of South Carolina to extradite the South Carolina fisherman to Georgia to stand trial on charges of obstruction of officers, simple battery, and illegal commercial fishing. On July 22, 1977, the Governor of South Carolina refused the requested extradition, stating in a letter to Governor George Busbee of Georgia that the refusal was based on the boundary dispute and claiming that the fisherman was in South Carolina waters at the time of his arrest.

The lateral seaward boundary has also been a matter of controversy between the two states. In 1969 a tentative settlement was arrived at,[11] but it was not ratified by the United States Congress and thus never became effective.

Since 1970 representatives from the two states have met on several occasions in attempts to resolve the boundary dispute. However, such attempts have proved fruitless. The State of Georgia feels that further delay in the resolution of the dispute would be a disservice to both states and to the citizens thereof, and therefore seeks to initiate the present action to achieve a final determination as to the boundary line.

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[11] Ga. Laws 1969, p. 677; S.C. Laws 1970, p. 2051.

The proposed Complaint is appropriate for the exercise of this Court's jurisdiction. The resolution of the present controversy is crucially important to both states, not merely financially but also in the exercise of their respective jurisdictions. This Court alone can achieve resolution of the controversy. Under Art. III, Sec. 2, Clause 2 of the Constitution of the United States and the decisions of this Court in *Virginia v. Tennessee*, 148 U.S. 503 (1893), and *Rhode Island v. Massachusetts*, 37 U.S. (12 Pet.) 657 (1838), the present case is a proper one for the exercise of this Court's original jurisdiction.

CONCLUSION

Based on the foregoing, it is respectfully submitted that the Motion for Leave to File Complaint should be granted.

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